IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7988 of 1996

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOVINDBHAI D PATEL

Versus

DISTRICT POLICE OFFICER

Appearance:

1. Special Civil Application No. 7988 of 1996

MR CL SONI for Petitioner No. 1

Mr. H.M. Prachchhak, AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 04/12/2004

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner has challenged the

order dated 3rd October 1996 passed by the respondent no.1, District Superintendent of Police, Banaskantha, terminating his services as Armed Police Constable (Recruit), on the ground that the petitioner had left the training of constable without taking the permission of the responsible officer, and remaining absent since 31st August 1996 and, therefore, his name is deleted from the service record and the services of the petitioner came to an end.

2. The learned advocate for the petitioner has contended that the aforesaid order of termination and deletion of his name from the service record is highly unjust, arbitrary and unreasonable in view of the fact that, suddenly, the petitioner caught a high fever on 30th August 1986, which was detected as 'P.Falciparam Malaria' and the petitioner was advised to leave the training by the concerned Doctor and to take rest at his native place and, therefore, he had left the training campus, at Karai. The learned advocate for petitioner has further submitted that the petitioner was examined and the necessary tests were carried out in the Laboratory at the Gujarat State Police Welfare Hospital, Shahibaug, Ahmedabad, and the treatment was given for two days and, thereafter, the petitioner had to leave for his native place at Deesa after informing the Officer Incharge of the Training, at Ahmedabad. Not only that, subsequently, the petitioner has submitted medical reports and necessary certificate of the Doctor at Deesa dated 4th September 1996 and the relevant evidence are produced on record at Annexure "D" and "E" to the petition. The learned advocate for the petitioner has, therefore, submitted that it cannot be said that the petitioner had left the training on his volition but he was compelled to leave the training in view of the disease contacted by the petitioner. After recovery from his illness, the petitioner submitted his duty report, but the respondent-Authority did not permit him to resume his duties and, therefore, the petitioner has approached this Court against the order dated 3rd October 1996, which is impugned in this petition.

3. When the matter is called out today for final hearing, after about eight years, the learned advocate, Mr. C.L.Soni, for the petitioner has produced on record the order dated 2nd July 1997 passed by the respondent No.1, whereby, the petitioner is taken back on duty. However, the learned advocate for the petitioner has made a grievance that the period from the date of terminating the service of the petitioner till the date of actually resuming duties is treated as leave without pay and the

said order is passed without affording any opportunity of hearing to the petitioner and, therefore, the said later part of the order is required to be interfered with by this Court in exercise of powers under Article 226 of the Constitution of India.

4. The learned Assistant Government Pleader has contended that the respondent has appreciated the facts narrated by the petitioner about his sickness and therefore the respondent No.1 has passed an order after due deliberation and has, rightly, treated the period from the date of terminating the service of the petitioner till the date of actually resuming duties, as leave without pay, in a just and fair manner, and, therefore, no illegality is committed by the respondent No.1.

5. I have heard the learned advocates for the parties. I have also perused the evidence produced on record and the order of reinstatement dated 2nd July 1997 produced today by the learned advocate for the petitioner, which is ordered to be taken on record. I do not think that by treating the interregnum period as leave without pay, the respondent No.1 has committed any illegality or arbitrariness in passing the said order. The petitioner was directed to, once again, undergo the training from the date of receipt of the order of reinstatement and the respondent No.1 has taken into consideration the grievance ventilated by the petitioner in its true spirit and has acted in a just and fair manner. However, as submitted by the learned advocate for the petitioner, if the petitioner makes a representation with regard to the second part of the order of reinstatement dated 2nd July 1997 treating the interregnum period as leave without pay, it is open to the respondents-Authorities to consider the same in accordance with law as expeditiously as possible. In the facts and circumstances of the present case, no further order is required to be passed.

6. In the result, Rule is discharged with no order as to costs.

(Anant S. Dave, J.)
(swamy)